Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-152
Telecommunications Act of 1996:	)	
	)	
Telemessaging,	)	
Electronic Publishing, and	)	
Alarm Monitoring Services	)	

BELLSOUTH OPPOSITION AND COMMENTS

BellSouth Corporation ("BellSouth"), on behalf of its subsidiaries and affiliates, hereby submits these comments in response to petitions for reconsideration or clarification of the FCC's *First Report and Order* in the above referenced proceeding.[1]

I. AT&T'S REQUEST FOR EXPANSION OF THE "OPERATED INDEPENDENTLY" STANDARD OF SECTION 274(b) SHOULD BE REJECTED

Section 274(b)[2] of the Communications Act[3] requires a Bell operating company's ("BOC's") electronic publishing separated affiliate or joint venture to be "operated independently" from the BOC. Subsections 274(b)(1) - (b)(9) set forth specific criteria that define the permitted relationship between the BOC and its separated affiliate or joint venture. The Commission properly determined in the *First Report and Order* that these specific criteria are Congress'

---

1 *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring,* CC Docket No. 96-152, *First Report and Order and Further Notice of Proposed Rulemaking,* FCC 97-35 (rel. Feb. 7, 1997) (*"First Report and Order"*).

2 47 U.S.C. § 274(b).

3 Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*

expression of the conditions that define the "operated independently" standard. AT&T's request that the Commission instead consider the "operated independently" standard to be an additional substantive requirement above and beyond the criteria set forth in Sections 274(b)(1) - (b)(9) must be rejected.

AT&T's principal claim is that the Commission's decision is erroneous because it results in a meaning of "operated independently" for purposes of Section 274(b) that differs from the meaning the Commission gave to that term for purposes of Section 272(b).[4] Although AT&T concedes that the Commission is not "bound to adopt the same construction of 'operate independently' in both Sections 272 and 274,"[5] AT&T contends that the Commission has not adequately explained the reasons for the difference. AT&T is wrong.

First, AT&T is wrong in its assertion that the Commission decided to permit a single BOC affiliate to provide the services covered by either Section 272 or 274 because of similarities in the structures and purpose of the two sections.[6] The Commission made clear that it is cognizant of the differences between the sections and required compliance with the more stringent of the two whenever a single affiliate provides a service covered by either section.[7] Moreover, the Commission's decision to permit a single entity to provide both types of covered services was based on the absence of any statutory or legislative history to compel the contrary.[8] AT&T's

---

4 47 U.S.C. § 272(b). *See, Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, *Report and Order and Further Notice of Proposed Rulemaking,* FCC 96-489 (rel. Dec. 24, 1996).

5 AT&T Petition at n.11.

6 AT&T Petition at 2. *See, First Report and Order* at 10.

7 *First Report and Order at 110.*

8 *Id.*

attempt to attribute to the Commission a determination that the two sections are "so similar" as to warrant simultaneous application to a single affiliate is misplaced. The Commission made no such determination. Accordingly, any inference AT&T attempts to draw from the Commission's prior determinations regarding Section 272(b) cannot be supported.

AT&T takes similar grammatical liberties with its re-construction of the language of Section 274(b) to support its contention that Congress intended the "operated independently" to be a stand-alone substantive restriction. Although AT&T properly quotes the initial sentence of that section, it interjects an erroneous interpretation of the second sentence by prefacing that quote with the clause, "The section then goes on to provide that, *in addition* ..."[9] Clearly, the second *sentence* is "in addition" to the first sentence. AT&T is incorrect, however, in suggesting that the second sentence imposes *obligations* "in addition" to or different from that of the first sentence.

The "in addition" clause that AT&T interjects is plainly absent from the language of Section 274(b). Rather, the second sentence of that section (which includes the substantive provisions of subsections (b)(1) through (b)(9)) simply delineates the substantive restrictions that apply to the separated affiliate or joint venture required by the first sentence to be operated independently. Had Congress intended the "operated independently" standard to be a separate substantive requirement, it would have included it as one of *ten* subsections of 274(b). Congress did not, and AT&T's contention must be rejected.

AT&T's attempt to draw upon an alleged "settled interpretation" of "operated independently" is similarly flawed.[10] The Commission has applied various forms of structural

---

[9] AT&T Petition at 3 (emphasis added).

[10] AT&T Petition at 4.

safeguards, including an operational independence requirement, in different contexts for many years, and has never purported to establish a singular, universally applicable set of requirements.

For example, although both the *Computer II* rules[11] and cellular separation rules[12] include an "operate independently" standard, the Commission has not applied this standard in singular fashion. As the Commission has noted:

> The cellular rules are almost identical to the *Computer II* rules. Significantly, however, the cellular rules, unlike the *Computer II* rules, permit the sharing of computer facilities used for tariffed service by the landline carrier and its cellular subsidiary if the carrier is adequately compensated for the use. Furthermore, unlike the *Computer II* rules, the cellular rules permit joint advertising and promotional efforts on behalf of cellular services between the landline carrier and its cellular subsidiary.[13]

Thus, AT&T's current angst over differences in the meaning of a term often used with different meanings in the past is superficial and hollow.

AT&T's arguments regarding the Commission's burden when rescinding a rule are also misplaced.[14] The Commission clearly is not rescinding a rule, but is articulating a new set of rules under a new statutory scheme. As AT&T's has noted, the degree of support provided by the Commission for its decision need not be as detailed or extreme when adopting its course in the first instance, as compared with what may be required if the Commission were in fact rescinding a rule.[15]

---

11 47 C.F.R. § 64.702.

12 47 C.F.R. § 22.903.

13 *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services, and Cellular Communications Services by the Bell Operating Companies,* 95 FCC 2d 1117, n.8 (1983) (citations omitted).

14 AT&T Petition at 6-7.

15 *Id.*

In any event, the degree of separation required by the Commission pursuant to Section 274(b) is not inconsistent with the policy the Commission pursued in the *Computer II* and cellular structural separation rules cited by AT&T. As the Commission summarized in the *Computer II Final Decision*, "[I]n addressing the appropriate degree of separation we take care to impose only the minimum necessary to address those regulatory concerns where sole reliance on accounting is an inappropriate safeguard."[16] Thus, even in the *Computer II* proceeding, the Commission established that the degree of separation required was to be balanced against the adequacy of applicable accounting safeguards. Of course, since the *Computer II* proceeding, the applicable accounting safeguards have been significantly strengthened. Accordingly, the Commission has much greater flexibility in structuring complementary safeguards and is not bound by notions of "operational independence" that may have prevailed prior to the revised accounting safeguards.

Finally, even with the Commission's earlier implementation of its "operational independence" standard, the degree of separation required has not been as absolute as AT&T suggests. For example, in *Computer II,* the Commission expressly permitted a carrier to perform research and development activity on behalf of its separated affiliate[17] and similarly permitted the sharing of administrative services.[18] AT&T's attempt to portray the Commission's instant decision as inconsistent with its prior policies is simply not supportable.

---

16 *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision,* 77 FCC 2d 384, 476 (1980).

17 *Computer II Final Decision,* 77 FCC 2d at 480-81.

18 *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Order on Reconsideration,* 84 FCC 2d 50, 84-85 (1980).

II. THE CLARIFICATION OR RECONSIDERATION OF THE FIRST REPORT AND ORDER REQUESTED BY PACIFIC TELESIS GROUP SHOULD BE GRANTED

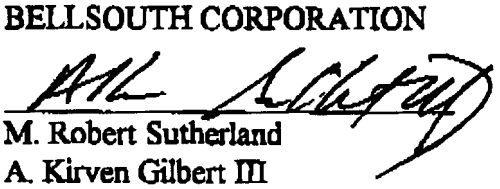
Pacific Telesis Group ("Pacific") contends that language in paragraphs 137 and 139 of the *First Report and Order* is overly broad insofar as it suggests that the joint marketing limitations of Section 274 (c)(1)(A) and (B) apply to a BOC (including entities owned or controlled by the BOC) engaged in provision of electronic publishing services disseminated via the basic telephone service of another carrier. As Pacific details, a BOC (including an entity owned or controlled by the BOC) disseminating electronic publishing via another carrier's basic telephone service has no obligation to utilize a separated affiliate or other affiliate. Accordingly, Sections 274(c)(1)(A) and (B) should have no bearing on such electronic publishing activities. BellSouth concurs in Pacific's assessment and supports clarification of the *First Report and Order* as requested in Pacific's petition.

CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to reject AT&T's request for reconsideration, but to grant the relief requested by Pacific.

Respectfully submitted,

BELLSOUTH CORPORATION



M. Robert Sutherland
A. Kirven Gilbert III

Its Attorneys

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-3388

DATE: April 30, 1997

Certificate of Service

I hereby certify that I have on this 30th day of April, 1997 served the following parties to this action with a copy of the foregoing **BELLSOUTH OPPOSITION AND COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

Sheila Bonner

Ava B. Kleinman
Mark C. Rosenblum
James H. Bolin, Jr.
AT&T CORP.
Room 3252J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Marlin D. Ard
Patricia L. C. Mahoney
PACIFIC TELESIS GROUP
140 New Montgomery Street
Room 1525
San Francisco, California 94105